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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* GRANT BENJAMIN, ALFONS CONLEY, ART MARSHALL,  
DALE MEIXELSPERGER, DOUG NEWLIN, URMI DESAI,  
REBECCA LAUSENG, and JONATHAN PRENDERGAST<sup>1</sup>

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Appeal 2016-007003  
Application 12/545,576  
Technology Center 3600

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Before ROBERT E. NAPPI, JOHN P. PINKERTON, and  
TERRENCE W. McMILLIN, *Administrative Patent Judges*.

PINKERTON, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1, 2, 4–23, and 26–30, which constitute all of the claims pending in the application. Claims 3, 24, and 25 are canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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<sup>1</sup> Appellants identify Fenwal Inc., a subsidiary of Fresenius Kabi AG, which is a subsidiary of Fresenius SE & Co. KGaA, Bad Homburg, Germany, as the real party in interest. App. Br. 1.

## STATEMENT OF THE CASE

### *Introduction*

Appellants state that the described invention “is directed to systems, articles of manufacture, and methods for managing blood processing operations and data for one or more blood component collection facilities.” Spec. ¶ 11.<sup>2</sup>

Claim 1 is representative and reproduced below (with the disputed limitation *emphasized* and added formatting):

1. In a blood component collection facility comprising a plurality of separately operable blood component collection instruments, a system for networking the blood component collection facility comprising:

a system computer comprising a memory and a communication interface, the system computer being linked to a plurality of input devices for tracking donors, operators, soft goods, and blood component collection instruments with respect to one or more blood product collection procedures, the system computer also being linked to at least one administrative level computing device to monitor blood component collection activities throughout the blood component collection facility and to present a graphical depiction on a display of data relating to at least one of donors, operators, soft goods, and blood component collection instruments based on information regarding at least one of donors, operators, soft goods, and blood component collection instruments,

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<sup>2</sup> Our Decision refers to the Final Action mailed Apr. 10, 2015 (“Final Act.”); Appellants’ Appeal Brief filed Nov. 2, 2015 (“App. Br.”) and Reply Brief filed July 5, 2016 (“Reply Br.”); the Examiner’s Answer mailed May 5, 2016 (“Ans.”); and the Specification filed Aug. 21, 2009 (“Spec.”).

wherein the system computer further communicates with  
a remote information system,

wherein the at least one administrative level computing  
device provides *operator-specific prompts based on the  
tracking information and monitored blood product collection  
activities.*

App. Br. 34 (Claims App'x).

*Rejections on Appeal*

Claims 1, 2, 4–23, and 26–30 stand rejected under 35 U.S.C. § 101  
because the claimed invention is directed to non-statutory subject matter.  
Final Act. 2.

Claims 1, 2, 4–23, and 26–30 stand rejected under 35 U.S.C. § 102(b)  
and (e) as being anticipated by Fletcher-Haynes et al. (US 2005/0209883  
A1; published Sept. 22, 2005) (“Fletcher-Haynes”). Final Act. 3–9.

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellants’  
arguments in the Briefs. For the reasons discussed *infra*, we are not  
persuaded by Appellants’ arguments that the Examiner erred in rejecting  
claims 1, 2, 4–23, and 26–30 under 35 U.S.C. § 101; we are, however,  
persuaded by Appellants’ arguments that the Examiner erred in rejecting  
claims 1, 2, 4–23, and 26–30 under 35 U.S.C. § 102(b) and (e).

*Rejection under § 101*

Under 35 U.S.C. § 101, an invention is patent-eligible if it claims a  
“new and useful process, machine, manufacture, or composition of matter.”  
35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101  
to include an implicit exception: “[l]aws of nature, natural phenomena, and

abstract ideas” are not patentable. *See, e.g., Alice Corp. Pty Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014).

The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1300 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice Corp.*, 134 S. Ct. at 2355. The first step in that analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts,” *id.*, e.g., to an abstract idea. For example, abstract ideas include, but are not limited to, fundamental economic practices, methods of organizing human activities, an idea of itself, and mathematical formulas or relationships. *Id.* at 2355–57. If the claims are not directed to a patent-ineligible concept, the inquiry ends. Otherwise, the inquiry proceeds to the second step where the elements of the claims are considered “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Alice Corp.*, 134 S. Ct. at 2355 (quoting *Mayo*, 132 S. Ct. at 1297–98).

The Court acknowledged in *Mayo*, that “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Mayo*, 132 S. Ct. at 1293. We, therefore, look to whether the claims focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery.

Here, in rejecting the claims under 35 U.S.C. § 101, the Examiner finds that claims 1, 2, 4–23, and 25–30 are “directed to a method of

organizing human activities (e.g. a system for collecting and sharing information from and between blood collection facilities).” Final Act. 2. In the Response to Arguments section of the Final Action, the Examiner also finds these claims

are directed to the abstract idea of “monitoring blood component collection activities, presenting a graphical depiction on a display of data, communicating with a remote information system, and provi[d]ing operator-specific prompts based on the tracking information and monitored blood production collection activities” which is (i) comparing new and stored information and rules to identify options, and (ii) using categories to organize, store, and transmit information.

*Id.* at 10.

The Examiner further finds

[t]he claim(s) does/do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the additional element(s) or combination of element(s) in the claim(s) in conjunction with the abstract idea per se amount(s) to no more than mere instructions to implement the idea on a computer, and/or the recitation of generic computer structure that serves to perform generic computer functions that are well-understood, routine, and conventional activities previously known to the pertinent industry.

*Id.* at 2; *see also* 10.

Appellants argue the Examiner erred by concluding the claims are directed to an abstract idea by finding the claims fall into the categories of “comparing new and stored information . . .” and “using categories to organize . . .,” as set forth in a chart titled Court Decision Chart Summary published on the USPTO web site. App. Br. 17. Appellants argue that independent claims 1, 16, and 23, as well as dependent claims 10, 14, 20,

and 21, are not similar to the technology involved in the cases of *SmartGene, Inc. v. Advanced Biological Labs., SA*, 555 F. App’x 950 (Fed. Cir. 2014), which is cited in the “July 2015 Update: Subject Matter Eligibility” as an example of “comparing new and stored information and using rules to identify options,” and *Cyberfone Sys., LLC v. CNN Interactive Group, Inc.*, 558 F. App’x. 988 (Fed. Cir. 2014) (unpublished), which is cited in the July 2014 Interim Guidance. App. Br. 18–32. Appellants argue that MPEP 2106 II states that many factors must be weighed in determining whether a claim is directed to patent eligible subject matter and many of these factors weigh in favor of eligibility in this case. *Id.* at 19–32. Appellants also argue the Examiner has made a conclusion based on one factor, which is prohibited by the MPEP. *Id.* Appellants further argue guidance from the USPTO in a May 4, 2016 Memorandum requires examiners to cite an appropriate court decision supporting the identification of claimed subject matter as an abstract idea, but the Examiner failed to do so here. Reply Br. 9.

We are not persuaded by these arguments. First, Appellants’ arguments improperly characterize the Examiner’s rejection under § 101. Appellants narrowly focus on whether the claims fall in the categories of “comparing new and stored information . . .” and “using categories to organize . . .,” but these categories are not mentioned in the Examiner’s rejection. Final Act. 2. Although the Examiner refers to these “categories” in the Advisory Action dated August 13, 2015, as Appellants’ argue, and in the Examiner’s Response to Arguments, considering these references in

context and together with the rejection, we find the Examiner has rejected the claims on the ground that they are directed to an abstract idea.<sup>3</sup>

Second, Appellants' arguments distinguishing *SmartGene* and *Cyberfone* are not persuasive because the Examiner did not cite these cases or rely on any comparison of the technologies in these cases to Appellants' claims, and neither do we. Third, Appellants' arguments regarding the Examiner's alleged failure to consider all the factors listed in the MPEP and follow the USPTO guidelines are not persuasive because the MPEP and the USPTO guidelines are not legal requirements. *Cf. In re Fisher*, 421 F.3d 1365, 1372 (Fed. Cir. 2005) ("The MPEP and Guidelines 'are not binding on this court'") (citations omitted); and MPEP, Foreword ("The Manual does not have the force of law or the force of the rules in Title 37 of the Code of Federal Regulations").

Appellants also argue that, after the Appeal Brief was filed, the Federal Circuit decided *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016), which held "the claims must do more than simply 'describe' or 'involve' an abstract idea to meet Step 2A of the *Alice/Mayo* test: the claims must be 'directed to' the abstract idea to meet this Step 2A."

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<sup>3</sup> In the Reply Brief, Appellants' argue for the first time that the Examiner has not explained how the claims are directed to an abstract idea and, therefore, the Examiner has not met the burden of providing a prima facie case of subject matter ineligibility. Reply Br. 8–9. Because this argument is raised by Appellants for the first time in the Reply Brief not in response to a shift in the Examiner's position or without otherwise showing good cause, it is waived. See 37 C.F.R. § 41.41(b)(2); see also *Ex parte Borden*, 93 USPQ2d 1473, 1474 (BPAI 2010) (informative) ("[T]he reply brief [is not] an opportunity to make arguments that could have been made in the principal brief on appeal to rebut the Examiner's rejections, but were not.").



Reply Br. 8. Appellants also argue the Court in *Enfish* “cautioned against describing claims ‘at such a high level of abstraction and untethered from the language of the claims’ lest it ‘all but ensures that the exceptions to § 101 swallow the rule.’” *Id.* at 10–11 (citing *Enfish*, 822 F.3d at 1337).

Regarding step one of *Alice*, we agree with Appellants that *Enfish* held that the “directed to” inquiry asks not whether “the claims *involve* a patent-ineligible concept,” but instead whether, “considered in light of the specification, . . . ‘their character as a whole is directed to excluded subject matter.’” *Enfish*, 822 F.3d at 1335. Regarding improvements to computer-related technology, the Court in *Enfish* held as follows:

We do not read *Alice* to broadly hold that all improvements in computer-related technology are inherently abstract and, therefore, must be considered at step two. Indeed, some improvements in computer-related technology when appropriately claimed are undoubtedly not abstract, such as a chip architecture, an LED display, and the like. Nor do we think that claims directed to software, as opposed to hardware, are inherently abstract and therefore only properly analyzed at the second step of the *Alice* analysis. Software can make non-abstract improvements to computer technology just as hardware improvements can, and sometimes the improvements can be accomplished through either route. We thus see no reason to conclude that all claims directed to improvements in computer-related technology, including those directed to software, are abstract and necessarily analyzed at the second step of *Alice*, nor do we believe that *Alice* so directs. Therefore, we find it relevant to ask whether the claims are directed to an improvement to computer functionality versus being directed to an abstract idea, even at the first step of the *Alice* analysis.

*Enfish*, 822 F.3d at 1335. Thus, we determine whether the claims “focus on a specific means or method that improves the relevant technology” or are “directed to a result or effect that itself is the abstract idea and merely invoke

generic processes and machinery.” *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016).

Although we agree with the legal principles advocated by Appellants, we are not persuaded by Appellants’ arguments that the claims as a whole are not directed to an abstract idea. Instead, we agree with the Examiner that the claims are “directed to” the abstract idea of gathering, analyzing, and displaying data — a patent-ineligible concept. The focus of claim 1 is on collecting or tracking information, monitoring activities, presenting a graphical display of certain of the data collected, and providing prompts based on the tracking information and monitored activities. Claim 16 is focused on collecting information and displaying certain results of the information, including a progress or alert for a procedure relating to the displayed results. Claim 23 is directed to collecting information, analyzing it, displaying results of the collection and analysis, making an automatic assignment based on the collected data, and configuring a device to perform a procedure based on the collected information. Considering the focus of the claims, we conclude they are directed to an abstract idea because “[t]he advance they purport to make is a process of gathering and analyzing information of a specified content, then displaying the results, and not any particular assertedly inventive technology for performing those functions.” *See Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016). Citing *Enfish*, Appellants argue these claims improve the functionality of the computers involved. Reply Br. 11–13. We are not, however, persuaded by these arguments because “the focus of the claims is not on [] improvement[s] in computers as tools, but on certain independently abstract ideas that use computers as tools.” *See Electric Power*, 830 F.3d at

1354. Thus, we find the claims are not directed to an improvement to computer functionality, but are directed to an abstract idea.

Regarding step two of *Alice*, Appellants argue that, even if the claims were directed to a judicially-recognized exception, they contain a specific limitation that is not “well-understood, routine and conventional in the field” and is not taught or suggested by Fletcher-Haynes. App. Br. 23–32.

Appellants also argue the Examiner has not addressed the claims in combination, but has instead looked to the Specification, which describes “discrete logic and/or hardware,” and states this “does not add meaningful limitations to the idea.” Reply Br. 9–10. We are not persuaded by these arguments.

First, as the Court explained in *Electric Power*, “merely selecting information, by content or source, for collection, analysis, and display does nothing significant to differentiate a process from ordinary mental processes, whose implicit exclusion from § 101 undergirds the information-based category of abstract ideas.” *Electric Power*, 830 F.3d at 1355. Second, Appellants’ have not provided persuasive evidence or arguments that any specialized computer hardware or other “inventive” computer components are required. To the contrary, as the Examiner finds, the Specification explicitly discloses that the claimed invention is implemented using conventional firmware, software, discrete logic and/or hardware performing “generic computer functions that are well-understood, routine and conventional activities previously known to the pertinent industry.” See Final Act. 10 (citing Spec. ¶¶ 90–98, 102; see also ¶¶ 99–101). Third, to the extent Appellants’ argue the claimed features are patentably distinct over Fletcher-Haynes, Appellants misapprehend the controlling precedent.

Although the second step of the *Alice* framework is termed a search for an “‘inventive concept,’” the analysis is not an evaluation of novelty or non-obviousness, but rather, a search for “an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Alice Corp.*, 134 S. Ct. at 2355. A novel and nonobvious claim directed to a purely abstract idea is, nonetheless, patent-ineligible. *See Mayo*, 132 S. Ct. at 1304.

Fourth, contrary to Appellants’ argument, the Examiner addressed the claims in combination and finds:

The claim(s) does/do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the additional element(s) or combination of element(s) in the claim(s) in conjunction with the abstract idea per se amount(s) to no more than mere instructions to implement the idea on a computer, and/or the recitation of generic computer structure that serves to perform generic computer functions that are well-understood, routine, and conventional activities previously known to the pertinent industry.

Final Act. 2.

We agree with the Examiner’s findings. Although the claims recite multiple computer operations, they do not go beyond conventional computer operations or methods of gathering, processing, and displaying know types of information. In other words, we are not persuaded that the operations in the claims are an improvement to any technology as opposed to an improvement to an abstract idea.

Finally, we are not persuaded by Appellants’ argument that the claims are limited to a particular field, which would not “effectively grant a

monopoly over the concept” and would not “tie up any such exception.” App. Br. 21, 26, 30; Reply Br. 13. Preemption is not a separate test, but is inherently addressed within the *Alice* framework. *See Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (“While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.”).

Accordingly, we sustain the Examiner’s rejection under 35 U.S.C. § 101 of independent claims 1, 16, and 23. For the same reasons, we sustain the rejection of dependent claims 10, 11, 14, 20, and 21. These claims do nothing more than append conventional components performing certain functionality, or insignificant post-solution activity, to claims found to be directed to unpatentable subject matter. *See Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1241–42 (Fed. Cir. 2016). We also sustain the rejection of dependent claims 2, 4–9, 12, 13, 15, 17–19, 22, and 26–30, which are not separately argued, except based on their dependence on their respective independent claim.

*Rejection under § 102(b) and (e)*

As indicated in the second-stated ground of rejection above, the Examiner rejects claims 1, 2, 4–23, and 26–30 under 35 U.S.C. § 102(b) and (e) as being anticipated by Fletcher-Haynes. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631 (Fed. Cir. 1987). Here, we are persuaded by Appellants’ arguments that the Examiner errs in finding Fletcher-Haynes anticipates the appealed claims because the Examiner has not shown that the disputed limitations are described in Fletcher-Haynes. App. Br. 4–14.

In rejecting claim 1, the Examiner cites paragraphs 35, 36, 43, and 52 of Fletcher-Haynes as describing the limitation “wherein the at least one administrative level computing device provides operator-specific prompts based on the tracking information and monitored blood product collection activities.” Final Act. 4; Ans. 4. Appellants argue, and we agree, that, although Fletcher-Haynes mentions “prompts,” they fail to teach or suggest the disputed limitation because they “are not operator-specific” and are not based on the tracking information and monitored blood production collection activities, as required by claim 1. App. Br. 4–5.

Regarding claim 16, Appellants argue Fletcher-Haynes does not describe

a graphical depiction of a plurality of blood component collection areas in a blood component collection facility, each depicted area comprising one or more of a graphical indicator of blood component collection instrument status; a graphical indicator of blood component collection kit status; a graphical indicator of operator status; and a graphical indicator of donor status.

App. Br. 9–10. The Examiner finds that Fletcher-Haynes “teaches ‘graphical indicator elements.’” Ans. 6 (citing Fletcher-Haynes Figs. 2A–2F, 3A–3D, 5A, 5B; ¶¶ 27, 28, 33, 34–52). Appellants argue, and we agree, that the Examiner “fails to specify where this particular claimed graphical depiction is shown in Fletcher-Haynes.” Reply Br. 5–6. We have also reviewed the portions of Fletcher-Haynes cited by the Examiner and agree with Appellants that they do not describe the disputed limitation of claim 16.

Regarding claim 23, Appellants argue Fletcher-Haynes does not describe “automatically assigning a donor to a collection station based on

donor information and available station information; and configuring a blood collection device at a collection station for blood collection from the donor via a remote download from a remote computer system.” App. Br. 13–14. We agree with Appellants’ argument that the Examiner has not specified where this limitation is described in Fletcher-Haynes. *Id.* at 14.

Accordingly, we do not sustain the rejection of claims 1, 16, and 23 under 35 U.S.C. § 102(b) and (e), as well as dependent claims 2, 4–15, 17–22, and 26–30.

#### DECISION

We affirm the Examiner’s rejection of claims 1, 2, 4–23, and 26–30 under 35 U.S.C. § 101.

We reverse the Examiner’s rejection of claims 1, 2, 4–23, and 26–30 under 35 U.S.C. § 102 (b) and (e).

Because we have affirmed at least one ground of rejection with respect to each claim on appeal, the Examiner’s decision is affirmed. *See* 37 C.F.R. § 41.50(a)(1).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1).

AFFIRMED